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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,681	11/17/2000	Yoav Raz	EMS-00202	4765
26339 7590 01/04/2007 MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY, SUITE 1001 WESTBOROUGH, MA 01581			EXAMINER DADA, BEEMNET W	
			ART UNIT	PAPER NUMBER
			2135	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/04/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/715,681

Applicant(s)

RAZ ET AL.

Examiner

Beemnet W. Dada

Art Unit

2135

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 22-28, 41-52 and 63-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 22-28, 41-52 and 63-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 20, 2006 has been entered. Claims 1, 22 and 41 have been amended and new claims 63-65 have been added. Claims 1-7, 22-28, 41-52 and 63-65 are pending.

### *Response to Arguments*

2. Applicant's arguments filed November 20, 2006 have been fully considered but they are not persuasive. Applicant argues that Waldin fails to teach scanning a storage device for viruses, comprising scanning at least parts of the physical portions for viruses, wherein scanning is performed without using directory information indicating which portions of the storage device are associated with a file, and without using information about a file structure, a file system or a file type. Examiner disagrees.

With respect to the newly added claim limitation "wherein scanning is performed **without using directory information indicating which portions of the storage device are associated with a file..**", the examiner cites MPEP 2173.05(i)

*"Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See In re Johnson, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also Ex parte Grasselli, 231 USPQ 393 (Bd. App. 1983), aff'd mem., 738 F.2d*

*453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement."*

Examiner would point out that the amended phrase clearly recites a negative limitation. Indeed, the specification must contain a full, clear and concise description of the claimed subject matter. The specification does not literally or implicitly exclude using directory information indicating which portions of the storage device are associated with a file. Examiner would also point out that Waldin teaches scanning at least parts of the physical portions for viruses, wherein scanning performed without using directory information indicating which portions of the storage device are associated with a file, and without using information about a file structure, a file system or a file type [column 6, lines 43-46, column 7, lines 37-46, column 7, line 64 – column 8, line 8 and column 3, lines 5-45].

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7, 22-28, 41-52 and 63-65 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to teach or mention scanning at least parts of the physical portions for viruses, wherein scanning is performed **without using**

directory information indicating which portions of the storage device are associated with a file.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4, 22-25, 41-44, 46-52 and 63-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Waldin et al. US Patent 6,094,731 (hereinafter Waldin).

6. As per claim 1, 41, 63 and 65, Waldin teaches a method of scanning a storage device for viruses, comprising:

determining physical portions of the storage device that have been modified since a previous virus scan using information about the physical portions without using information about a file structure, a file system, or a file type [column 2, lines 57-64 column 6, lines 37-47 and column 3, lines 5-45]; and

scanning at least parts of the physical portions for viruses, wherein scanning performed without using directory information indicating which portions of the storage device are associated with a file, and without using information about a file structure, a file system or a file

type [column 6, lines 43-46 ,column 7, lines 37-46, column 7, line 64 – column 8, line 8 and column 3, lines 5-45].

7. As per claims 2 and 42, Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein the physical portions correspond to tracks (sectors) of the storage device [column 4, lines 4-8 and figure 1].
8. As per claims 3 and 43, Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein the physical portions correspond to sectors of the storage device [column 4, lines 4-8 and figure 1].
9. As per claims 4 and 44, Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein the physical portions correspond to sub-portions of the storage device [column 4, lines 4-8 and figure 1].
10. As per claims 46, 51 and 52 Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein said means for coupling includes means for coupling to only one storage device [column 3, lines 47-55].
11. As per claims 47-50, Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein said means for coupling includes means for coupling to more than one storage device [column 8, lines 20-30].

12. As per claims 22-25 and 64, the claimed steps correspond to the functions of the elements of the method claims 1-4, which has been rejected above and thus rejected with the same reason applied thereto.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 5-7, 26-28 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waldin et al. (U.S. Patent No. 6,094,731).

15. As per claims 5 and 45, Waldin teaches the method as applied above. Furthermore, Waldin teaches creating a table that is indexed according to each of the portions [fig 1, unit 10 and column 4, lines 4-8]. Waldin also teaches scanning for viruses when it has been determined that portions have been modified [column 4, lines 9-12], and calculating a new hash value upon determination of a modification [column 4, lines 58-60]. However Waldin does not explicitly teach setting a specific one of entries subject to a write operation. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a method of setting a specific one of entries subject to a write operation. This would have been obvious because Waldin teaches placing identification numbers into sectors that is scanned, every time a sector is read [column 4, lines 52-58]. Based on this teachings it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a method of

setting a specific one of entries subject to a write operation into the indexed sector table thought by Waldin.

16. As per claims 6 and 7, Waldin teaches the method as applied to claim 5 above. Furthermore Waldin teaches method, wherein creating the table includes copying another table provided by the storage device [column 3, lines 50-55, figure 1, originating and recipient computers].

17. As per claims 26-28, the claimed steps correspond to the functions of the elements of the method claims 5-7, which has been rejected above and thus rejected with the same reason applied thereto.

### ***Conclusion***

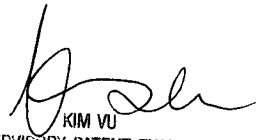
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beemnet W. Dada whose telephone number is (571) 272-3847. The examiner can normally be reached on Monday - Friday (9:00 am - 5:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Y. Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Beemnet W Dada  
December 23, 2006

  
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